

## **NOTICE OF PROPOSED ACTION**

### **California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5, Penal Code (PC) Section 5058, and the rulemaking authority granted by PC Section 5058.3, in order to implement, interpret and make specific PC Section 5054, proposes the adoption of the California Code of Regulations, Title 15, Section 3269, and Subsections 3315(f)(5)(N)(1) and (2), concerning inmate housing assignments and the disciplinary ramifications for failure to comply. On March 7, 2008, the CDCR filed a Notice of Adoption of Emergency Regulations with the Office of Administrative Law concerning inmate housing assignments. The Notice Publication/Regulations Submission was assigned Emergency Number 2008-0307-02E.. The public hearing is scheduled for May 30, 2008.

#### **PUBLIC HEARING:**

Date and Time: **May 30, 2008, 10:00 a.m. to 11:00 a.m.**  
Place: Corrections Standards Authority  
Large Conference Room  
660 Bercut Drive, West Entrance  
Sacramento, CA 95811  
Purpose: To receive comments about this action.

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close **May 30, 2008, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or by e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 341-7390**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**John McClure  
Regulation and Policy Management Branch  
Telephone (916) 341-6894**

Questions regarding the substance of the proposed regulatory action should be directed to:

**W. DesVoignes  
Associate Warden, Division of Adult Institutions  
Telephone (916) 323-4219**

### **LOCAL MANDATES:**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

### **FISCAL IMPACT STATEMENT:**

- Cost to any local agency or school district that is required to be reimbursed: *None.*
- Cost or savings to any state agency: *None. However, if these regulations are not adopted and more inmates are allowed to single cell, the potential financial impact to the Department could be significant.*
- Other nondiscretionary cost or savings imposed on local agencies: *None.*
- Cost or savings in federal funding to the state: *None.*

### **EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

### **ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:**

The Department has determined that the proposed regulation will have no affect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

### **CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action.

### **AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

### **AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

- This action adopts provisions governing Inmate Housing Assignments, particularly those housing assignments regarding the double celling of inmates. Historically, it has been a generally accepted practice that inmates are expected to double cell. This policy was stipulated via Departmental memorandum dated April 25, 2003, although regulatory language was not correspondingly adopted. In late 2006, several inmates petitioned the Office of Administrative Law (OAL) contending that the memorandum constitutive an underground regulation, and the OAL agreed. This matter has since been filed in court. The Department asserts that it would be a serious development should an inmate successfully enjoin the Department in the courts to overturn our double cell practices, particularly in light of our overcrowding issues.
- This action will ensure that these provisions provide the appropriate authority and direction for the review and approval for placement of an inmate into an appropriate housing assignment. The remedial sanctions must also have the force of law should an inmate refuse to accept a housing assignment as directed by staff.
- These regulations incorporate by reference into the text CDC Form 114-A1 (rev. 10/98), Inmate Segregation Profile, and Form 1882 (rev. 2/07), Initial Housing Review.